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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/671,211

09/25/2003

Jose Carlos de Azevedo

J&J5040

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01/26/2009

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EXAMINER

SAMALA, JAGADISHWAR RAO

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

01/26/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/671,211	<b>Applicant(s)</b> DE AZEVEDO ET AL.	
	<b>Examiner</b> JAGADISHWAR R. SAMALA	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **RCE Acknowledged**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/22/2008 has been entered.

### **Status of Application**

2. Acknowledgement is made of amendment filed on 10/22/2008. Upon entering the amendment, the claim 12 and 13 are amended and claims 16-17 are cancelled. Accordingly, claims 12-15 are pending and presented for examination.

### **Response to Arguments**

3. Applicant's argument filed on 10/22/2008 with respect to 103(a) rejection of Su (US 6,287,545) or Michael (US 2001/0043912 A1) or Bertolosso et al. (US 2001/0056048 A1) in view of Schmenger et al. (US 6,528,046 B1) is maintained.

### **Claim Rejections - 35 USC § 103**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertolosso et al (US 2001/0056048 A1) or Michael (US 2001/0043912 A1) in view of Schmenger et al (US 7,737,046 B2).

Applicant claims are drawn to a composition for combing hair consisting essentially of a thickener; a fatty alcohol and surfactant mixture; a cationic polymer; and silicone and excipient components.

Bertolosso discloses a hair treatment composition comprising fatty alcohols such as cetyl alcohol, stearyl alcohol and mixtures thereof in a range of 0.01% - 10% (see 0117) cationic surfactants such as cetyltrimethylammonium chloride, behenyl trimethylammonium chloride, cetylprtidinium chloride and thereof in a range of 0.01% - 10% (0113), cationic polymers such as polyquaternium-10, Jaguar C13S about 0/1% (0103 and 0132), amino functionalized silicone such as amodimethicone in a range of 0.1 to about 8.0 mole % (0016 and 0043), and preservatives, polyols, antioxidants such as vitamin E acetate, fragrances and thereof (0120). And also, hair treatment composition may suitably take the form of shampoos, conditioners, sprays, mousse or lotions (see 0068).

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Michael discloses a hair care composition comprising non-ionic hydrophobic thickener in an amount ranging from 0.02%-1% (see 0095), fatty alcohols in a range of 1%-10% (0064), cationic surfactant in a range of 0.1%-3% (0067), cationic polymer in a range of 0.5%-10% (0075) and silicon in range of 0.001%-5% (0011). And also, these hair-care compositions encompass any composition form intended for human use on hair including for e.g. tonics, creams, and balms (see 0026). And further composition comprises additional formulation aiding components such as surfactants, salts, buffers, thickeners, solvents, opacifiers, pearlescent aids, preservatives, fragrance, colorants, dyes, pigments, chelators, sunscreens, vitamins, and medicinal agents (see 0106).

Bertolosso and Michael meets the claims limitations as described above but fails to include polyether-1 as a thickener in the composition.

However, Schmenger discloses a hair treatment composition comprising thickener such as polyether-1 in a range of 0.1% to 5 % (see col. 2 lines 17-18 and col. 3 lines 60-61). The composition can be used as a leave-in hair treatment or as a hair rinse condition the hair and conferring to its gloss and volume (abstract). Further the use of nonionic amphiphilic associative thickeners such as polyether-1, in the composition provides conditioning effect in the best manner and shows improved emulsification during use. And after treatment, the hair, in both the moist and the dry state, is noticeably smoother, and the wet combability is noticeably improved (col. 2 lines 26-32).

When these references are taken together, one would have been motivated to extend Schmenger's teaching to add a polyether-1 thickener, which may provide

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esthetic properties and desirable physical properties to the compositions. As suggested by cited references, one would have reasonably expected successful addition of thickener (polyether-1) because the effectiveness, extra benefits (i.e., after the treatment, the hair is noticeably smoother in both the wet and the dry state, and wet combability is markedly improved and also improves the stylability, combability, gloss and feel of the treated hair) and safety are already well proven and are well suggested by latter references cited.

One would have been motivated to combine these references and make the modification because they are drawn to same technical fields (constituted with same ingredients and share common utilities), and pertinent to the problem which applicant concerns about. MPEP 2141.01 (a).

Applicant's arguments filed on 10/22/2008 have been fully considered but they are not persuasive.

Applicant asserts that Schmenger patent includes additional ingredient a propellant in addition to a nonionic, amphiphilic associative thickener in the composition. This argument is not persuasive because "consisting essentially of" claim occupies a middle ground between closed claims that are written in a consisting of format and fully open claims that are drafted in a comprising format (see MPEP 2111.03 (R-3)). Further, composition taught by Schmenger can be used in same field of endeavor, such as a leave-in hair treatment or as a hair rinse which condition the hair and confers to it luster and volume.

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3. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertolosso et al (US 2001/0056048 A1) or Michael (US 2001/0043912 A1) in view of Dupuis et al (US 2004/0071652 A1).

Applicant claims are drawn to a composition for combing hair consisting essentially of a thickener; a fatty alcohol and surfactant mixture; a cationic polymer; and silicone and excipient components.

Bertolosso and Michael meet the claims limitation as described above but fail to include polyether-1 as a thickener in the composition.

Dupuis et al discloses a cosmetic hair composition comprising, in a cosmetically acceptable medium, at least a thickening polymer with aminoplast-ether skeleton such as polyether-1 in an amount from about 0.05% to 3%(see abstract and para 0053 - 0054). And the composition may also contain additive such as nonionic, anionic, cationic surfactants, cationic polymers (0056, 0059), silicon polymer and the like (0200). Additional disclosure includes that the compositions may be used for manufacturing numerous hair products such as, for example products for fixing and/or holding the hair, conditioning products, for instance sheen formulations or hair care product (0283).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate polyether-1 into Su, Michael or Bertolosso cosmetic compositions. The person of ordinary skill in the art would have been motivated to make these modifications to prepare cosmetic hair compositions containing polyether-1 and reasonably would have expected success, because polyether-1 containing hair

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composition as taught by Dupuis can be used in same field of endeavor, such as hair products, hair conditioning products or hair fixing and/or styling products.

### **Conclusion**

1. No claims are allowed at this time.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGADISHWAR R. SAMALA whose telephone number is (571)272-9927. The examiner can normally be reached on 8.30 A.M to 5.00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/

Jagadishwar R Samala



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Primary Examiner, Art Unit 1618

Examiner  
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sjr